UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORRINE BAKER,

      Petitioner,   Civil No. 2:15-CV-11629
                       HON. GEORGE CARAM STEEH
    v.   UNITED STATES DISTRICT JUDGE

ANTHONY STEWART,

      Respondent.
_____/

OPINION AND ORDER: (1) GRANTING MOTION TO REINSTATE THE HABEAS PETITION (Dkt. # 18) AND ORDERING THE CLERK OF THE COURT TO REOPEN THE CASE TO THE COURT'S ACTIVE DOCKET, (2) GRANTING THE MOTION TO AMEND THE PETITION FOR A WRIT OF HABEAS CORPUS, (3) DIRECTING THAT THE AMENDED PETITION (Dkt. ## 14-17) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (4) DIRECTING RESPONDENT TO FILE AN ANSWER AND <u>ANY ADDITIONAL RULE 5 MATERIALS IN THIS CASE</u>

Petitioner filed a petition for a writ of habeas corpus pursuant to 28

U.S.C. § 2254, which was held in abeyance to permit Petitioner to return to

the state courts to exhaust additional claims.

Petitioner has filed an amended petition for a writ of habeas corpus,

which is construed as a motion to reopen the case and to amend the

habeas petition. The motion is GRANTED. The Clerk of the Court shall

reopen the case and serve a copy of the amended petition for a writ of

habeas corpus upon respondent and the Michigan Attorney General's

Office. Respondent shall file an answer and any additional Rule 5 materials within **ninety (90) days** of the Court's order.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. *See e.g. Rodriguez v. Jones,* 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner alleges in her amended petition that her claims were exhausted with the state courts. The case is reopened.

Petitioner's proposed amended habeas petition should be granted because it advances claims that may have arguable merit. *See e.g. Braden v. United States*, 817 F.3d 926, 930 (6th Cir. 2016).

The Clerk of the Court shall serve a copy of the amended petition for a writ of habeas corpus [Dkt. ## 14-17] and a copy of this Order on Respondent and on the Attorney General for the State of Michigan as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry,* No. 04-71209, 2005 WL 1861943, *2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer to the amended petition within ninety days of the Court's order. See *Erwin v. Elo,* 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent shall provide any additional Rule 5 materials with the answer. See *Griffin v. Rogers,* 308 F.3d 647, 653 (6th Cir. 2002); Rules

Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.[1] Petitioner has

forty five (45) days from the receipt of the answer to file a reply brief, if she

so chooses. *See* Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C.

foll. § 2254.

ORDER

IT IS ORDERED THAT:

(1) The motion to reinstate the petition is **GRANTED.** The
Clerk of the Court shall reopen the habeas petition to the
Court's active docket**.**

(2) The motion to amend the petition for writ of habeas corpus is
GRANTED.

(3) The Clerk of the Court shall serve a copy of the amended
petition for a writ of habeas corpus [Dkt. ## 14-17] and a copy
of this Order on Respondent and the Attorney General.

(4) Respondent shall file an answer and any additional Rule 5
materials within **ninety (90) days** of the date of this order or
show cause why they are unable to comply with the order.

(5) Petitioner shall have **forty five (45) days** from the date that
she receives the answer to file a reply brief.

Dated: October 2, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

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[1] Respondent already filed some Rule 5 materials in this case and would therefore only be required to file any additional Rule 5 materials from petitioner's state post-conviction proceedings or any other Rule 5 materials which have already not been provided.

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│               CERTIFICATE OF SERVICE                │
│                                                     │
│  Copies of this Order were served upon attorneys of │
│  record on October 2, 2019, by electronic and/or    │
│  ordinary mail.                                     │
│                                                     │
│                s/Marcia Beauchemin                  │
│                   Deputy Clerk                      │
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